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No. 02-1613

Supreme Court, U.S.
FILED
OCT 29 2003
OFFICE OF THE CLERK

In The

Supreme Court of the United States

DIANE L. HOLBROOK,

Petitioner,

v.

ALLIED VAN LINES, INC.,
a foreign corporation,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR REHEARING

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QUESTIONS PRESENTED

Pursuant to 28 U.S.C. § 1337, petitioner originally filed Complaint in the County Court of the 19th Judicial Circuit in and for Martin County, Florida on October 16, 2000 exceeding $2,500, but does not exceed $15,000, and as such is within the jurisdiction of the County Court, exclusive of interest, costs, and punitive damages. The respondent was served from County Court. On July 6, 2001, the respondent paid filing fee of $150, and filed a "Notice of Removal" of complaint from County Court to United States District Court without a motion to be presented and without an order to do so, since no motion was presented. Therefore, petitioner submits that the following are more accurately phrased questions:

1. Especially when the public has reasonably relied on a differing concept, whether prospective application of a given decision is entirely a question of law must establish a new principle of law by either, overruling clear past precedent on which litigants have relied, or, by deciding an issue of first impression whose resolution was not clearly foreseen and, therefore, is freely reviewable.

2. Since no order granted such removal to District Court, whether under 28 U.S.C. § 455(a) and under 28 U.S.C. § 144 involving a recusal and disqualification of the Judges before whom the matter is pending having a personal bias or prejudice either against petitioner or in favor of any adverse party.

PETITIONER'S PETITION FOR REHEARING

Diane L. Holbrook respectfully requests that this Court grants the petition for rehearing seeking review of the petitions for a writ of certiorari vacating denied and certiorari(s) granted and rehearing granted. Pursuant to Rule 44 of this Court's Rules, this petition has been filed within 25 days of the denial of the petition(s) for a writ of certiorari.

REASONS FOR GRANTING THE REHEARING

Respondent(s) signed waiver(s) to not file oppositions to petition(s) for writ of certiorari.

The issues involves case(s) of first impression because it presents an entirely novel question of law that was never before considered by any court which seeks clarification of statutory interpretations, especially when the public has reasonably relied on a differing concept. *Larsen v. Sioux Falls School District #49-5 and Rockwood Insurance Company*, 509 N.W.2d 703. "Appellate courts are empowered and justified in confining the effect of a decision of first impression or of novel or unexpected impact to prospective application if considerations of fairness and justice, related to reasonable surprise and prejudice of those affected, seem to call for such treatment. It may also apply to cases of first impression which seek clarification of statutory interpretations, especially when the public has reasonably relied on a differing concept." "Prospective application of a given decision is entirely a question of law and, therefore, is freely reviewable. In making this determination, there are three factors that must be considered: (1) the decision to be applied prospectively must establish a new principle of law by either, overruling clear past

precedent on which litigants have relied, or, by deciding an issue of first impression whose resolution was not clearly foreseen; (2) the court must weigh the merits and demerits of each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further retard its operation; and (3) the court must determine whether the decision would produce substantial inequitable results if applied retroactively."

Only the "Notice Of Removal" of complaint was done by respondent. Respondent did not do a Motion Of Removal to be presented to the District Court and no Order, since no motion was presented, allowed such removal to Federal Court. Therefore, under 28 U.S.C. § 455(a) a recusal is required when a reasonable person would harbor doubts about judge's impartiality. Furthermore, respondent's Summary Judgment should be vacated for a violation of 28 U.S.C. § 455(a). Under 28 U.S.C. § 144 disqualifies the Judge before whom the matter is pending having a personal bias or prejudice either against him/her or in favor of any adverse party.

A court must find that the moving parties demonstrated the following three elements: (1) excusable neglect in failing to respond; (2) meritorious defenses; and (3) that the party acted with due diligence in seeking relief from a default judgment entitled to petitioner. Parties must show (1), (2), and (3) in order to obtain relief from a default judgment. *Lehner v. Durso*, 816 So.2d 1171 (Fla. App. 4 Dist. 2002). Amended Complaint was filed in the County Court of the 19th Judicial Circuit in and for Martin County, Florida and no answer has been filed in this County Court to this date resulting into a no answer default judgment against the respondent.

SUMMARY OF THE ARGUMENTS

Since the respondent, Allied Van Lines, Inc., does not intend to file a response in opposition to the petition for a writ of certiorari by signing a waiver to this Court indicates having no arguments or counter questions would be reasoning to grant the petition for writ of certiorari in full favor of the petitioner.

The issues involved pursuant to case(s) of first impression has to do with original jurisdiction of original filing in the County Court pursuant under 28 U.S.C. § 1337 clearly provides for "an action" means each action. This case has two separate actions. In relevant part of the first impression, 28 U.S.C. § 1337 states:

> "Provided, however, That the district courts shall have original jurisdiction of an action brought under section 11706 or 14706 of title 49, *only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.*"

Examples of petitioner's interpretation of 28 U.S.C. § 1337 like shipper inventory number G041859 damaged #61 wicker chair has wicker's broken and missing box #69 would be one (according to law written as *each bill of lading*). Receipt Number B 5444 showing double billed paid would be one (according to law written as *each receipt*). Each receipt, as well as, each bill of lading are each less than $10,000. Therefore, County Court has 100% jurisdiction over matters of this case.

Amended Complaint was filed and served upon respondent back at the first week of September, 2001 in the County Court and no answer has been provided to the County Court itself, therefore a default judgment against the respondent should be entered. Rule 60(a) clerical

mistake(s) in judgments, orders or other parts of the record, and errors therein arising from *oversight or omission* when not corrected by the court at any time of its own initiative . . . , a violation of Rule 60(a) or Rule 1.540(a).

CONCLUSION

For the foregoing reasons, petitioner Diane L. Holbrook respectfully requests that this Court grants the petition for rehearing. The petition for rehearing should be granted because decision is entirely a question of law and is freely reviewable, in part, as case of first impression.

Respectfully submitted,

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CERTIFICATE OF PETITIONER

Pursuant to Rule 44 of this Court's Rules, Petitioner certifies that the issues presented in this Petition for Rehearing concerns a substantial legal ground not previously presented to this Court. Petitioner further certifies that these issues, which raises an important question of constitutional jurisprudence and lower courts jurisdiction, is presented in good faith and not for delay.

This the 28th day of October, 2003.

DIANE L. HOLBROOK
Petitioner